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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

PAUL W. PRATT, D.C., Plaintiff/Appellant, v. PATRICE PRITZL, as Executive Director of the STATE OF ARIZONA BOARD OF CHIROPRACTIC EXAMINERS, an agency of the State of Arizona, Defendant/Appellee.	2 CA-CV 2009-0083 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C-20087227

Honorable Virginia C. Kelly, Judge

AFFIRMED

Eric L. Hager — Tucson
Attorney for Plaintiff/Appellant

Terry Goddard, Arizona Attorney General
By Marc H. Harris — Phoenix
Attorneys for Defendant/Appellee

V Á S Q U E Z, Judge.

¶1 Paul Pratt, D.C., appeals from the superior court's dismissal of his complaint seeking to revoke or modify a subpoena issued by the Arizona Board of Chiropractic Examiners (the "Board").[1] He contends the court erred in dismissing the complaint and requiring him to comply with the subpoena because he did not possess any "medical records" sought by the Board.

Factual and Procedural Background

¶2 In September 2008, C.F. filed a complaint against Dr. Pratt with the Board. In the complaint, she stated she had gone to see Pratt for back and leg pain, and "[a]fter takin[g] 2 x[-]rays, [she] was sent home with a returning app[ointmen]t for further consultation." When she returned for the follow-up consultation, Pratt told her the treatment would cost $12,000, which she could pay, with interest, over three years. The Board mailed Pratt notice that C.F.'s complaint had been filed. It also issued a subpoena for (1) a written response to the complaint, (2) "[a]ll chiropractic medical records as defined in A.R.S. [§] 12-2291(5) to include, but not limited to health histories, examinations, daily progress notes, billing records, x-rays and x-ray reports, and sign-in sheets for C[.]F[.]," and (3) documentation of compliance with continuing education requirements.

¶3 Pratt provided a response to the complaint and his continuing education records, but he did not produce copies of any medical records or progress notes. The

[1]Pursuant to A.R.S. § 32-929(B)(3), "[t]he superior court, upon application . . . by the person subpoenaed, shall have jurisdiction to issue an order . . . [r]evoking, limiting or modifying the subpoena . . . ."

Board sent a follow-up letter noting the lack of medical records and informing Pratt it had added another potential violation, his failure to comply with the subpoena, to the complaint. Pratt then filed the instant complaint in the superior court seeking revocation or modification of the subpoena relating to the request for medical records and progress notes, claiming the records sought were irrelevant to the allegations in the chiropractic complaint. After oral argument, the court dismissed Pratt's claim with prejudice and ordered him to provide "any records that he has of [C.F.'s] visit to his office, including, but not limited to, x-rays and notes." This appeal followed.

Standard of Review

¶4 "On appeal from the superior court's review of an administrative decision, we must determine whether the record supports that court's judgment." *Lathrop v. Ariz. Bd. of Chiropractic Exam'rs.*, 182 Ariz. 172, 177, 894 P.2d 715, 720 (App. 1995); *see also Samaritan Health Servs. v. Ariz. Health Care Cost Containment Sys. Admin.*, 178 Ariz. 534, 537, 875 P.2d 193, 196 (App. 1994). In doing so, we must consider "whether the administrative action was illegal, arbitrary, capricious or involved an abuse of discretion." *Id.*

Discussion

¶5 Pratt contends the superior court erred in denying his request to revoke or modify the subpoena. He asserts C.F. did not allege in her complaint that he had violated the Arizona Chiropractic Act. *See* A.R.S. § 32-924. The Board is permitted "on its own motion or on receipt of a complaint . . . [to] investigate any information that appears to

show that a doctor of chiropractic is or may be in violation of this chapter or board rules." § 32-924(B). Courts must therefore give "'wide berth'" when reviewing the validity of an investigation conducted by the Board. *Carrington v. Ariz. Corp. Comm'n*, 199 Ariz. 303, ¶ 8, 18 P.3d 97, 99 (App. 2000), *quoting Polaris Int'l Metals Corp. v. Ariz. Corp. Comm'n*, 133 Ariz. 500, 506, 652 P.2d 1023, 1029 (1982). Based on the allegations in C.F.'s complaint—that after taking two x-rays, Pratt attempted to have her sign a contract obligating her to pay $12,000 for treatment—the Board became concerned that Pratt had engaged in a number of actions that could be grounds for disciplinary action and initiated this investigation.[2] The Board's concern was neither arbitrary nor capricious, and we cannot say its initiation of an investigation based on the information presented to it was an abuse of discretion. *See Lathrop*, 182 Ariz. at 177, 894 P.2d at 720. The court therefore did not err in refusing to revoke or modify the subpoena.

¶6 Pratt also argues the superior court erred in construing the subpoena to require him to produce "any records" pertaining to C.F. rather than only those that qualify as medical records pursuant to A.R.S. § 12-2291(5), as the subpoena had specified. He further contends he has no medical records pertaining to C.F. because she was never a patient as defined in the medical records statute.[3] The interpretation of a statute is a legal

[2]Section 32-924 lists numerous grounds for disciplinary action, including the following broadly stated ground: "Unprofessional or dishonorable conduct of a character likely to deceive or defraud the public or tending to discredit the profession." § 32-924(A)(5).

[3]Pratt argued below that he was entitled to an evidentiary hearing on this issue. However, because he did not raise this argument in his opening brief, it is waived. *Best*

issue we review de novo. *Pinal Vista Props., L.L.C. v. Turnbull*, 208 Ariz. 188, ¶ 6, 91 P.3d 1031, 1033 (App. 2004). "Our primary goal in construing a statute is to determine and give effect to the intent of the legislature." *Id.* ¶ 10. And, when the statute's language is clear, "we follow its direction without resorting to other methods of statutory interpretation." *Id.*

¶7 The subpoena required Pratt to produce "[a]ll chiropractic medical records as defined in A.R.S. [§] 12-2291(5)." That statute defines medical records as "all communications related to a patient's physical or mental health or condition that are recorded in any form or medium and that are maintained for the purpose of patient diagnosis or treatment." § 12-2291(5). Pratt contends that because the statute refers to a "patient's" records, and because the subpoena referred to § 12-2291(5), he was not obligated to produce any of C.F.'s records because she was not a patient. He argues a person legally cannot be considered a patient under the statute unless there is "consent by the person to become a patient, consent by the doctor accepting that person as a patient, and treatment being furnished." However, there is no support for this definition in the statutory language.[4] As noted above, § 12-2291(5) defines medical records as those

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v. Edwards, 217 Ariz. 497, n.7, 176 P.3d 695, 702 n.7 (App. 2008). Additionally, Pratt does not contend he has no records pertaining to C.F. or that those records would not be subject to disclosure if the subpoena had asked for them. His sole argument here is that he has no records satisfying the subpoena's request because C.F. was never a patient, and her records cannot, therefore, qualify as medical records under the statute.

[4]The cases Pratt relies on to support his argument that C.F. was not a patient do not address whether an individual who consults a doctor for diagnostic purposes but does not pursue further treatment with that doctor is a patient within the meaning of § 12-

records "maintained for purposes of patient *diagnosis or* treatment." (Emphasis added.) The plain language of the statute thus explicitly states that "patient" records may be created solely for purposes of diagnosis without the corresponding provision of treatment. Neither party contends C.F. did not consent to whatever actions Pratt took during the initial consultation and, by later offering C.F. $12,000 worth of treatment, Pratt necessarily must have diagnosed C.F.'s condition.[5] Any records he created or relied on in reaching that diagnosis are thus medical records within the plain meaning of § 12-2291(5).

¶8 Because we have concluded the records pertaining to C.F. in Pratt's possession are medical records as contemplated in the statute, they were specifically and appropriately requested in the Board's subpoena. *See Carrington*, 199 Ariz. 303, ¶ 9, 18 P.3d at 305 (party may challenge subpoena on grounds agency exceeded authority, vagueness, irrelevance, or improper purpose). The superior court therefore did not err in dismissing Pratt's complaint and ordering him to produce C.F.'s medical records.

2291(5). *See Findlay v. Bd. of Supervisors*, 72 Ariz. 58, 230 P.3d 526 (1951); *Irvin v. Smith*, 31 P.3d 934 (Kan. 2001); *Tracy v. Merrell Dow Pharms., Inc.*, 569 N.E.2d 875 (Ohio 1991); *Kelley v. Middle Tenn. Emergency Physicians, P.C.*, 133 S.W.3d 587 (Tenn. 2004); *Prosis v. Foster*, 544 S.E.2d 331 (Va. 2001).

[5]Although in her sworn statement C.F. stated she "never consented to become a patient of Dr. Pratt," it is clear from the context that she meant she did not consent to Dr. Pratt treating her after the initial consultations. And Pratt's own sworn statements that C.F. "ha[d] never been a patient of [his]" and that he "ha[d] never rendered chiropractic or other treatment upon [C.F.]" do not establish that he did not voluntarily undertake to diagnose her complaints of leg and back pain.

Disposition

¶9 For the reasons stated above, we affirm the superior court's dismissal of Pratt's complaint and its order compelling him to produce C.F.'s records. Because he has not prevailed on appeal, we deny Pratt's request for attorney fees and costs.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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JOSEPH W. HOWARD, Chief Judge